U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOANNA HINE and DEPARTMENT OF VETERANS AFFAIRS, VIRGINIA CONNECTICUT HEALTH CARE SYSTEM, West Haven, CT

Docket No. 99-174; Submitted on the Record;
Issued April 11, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty as alleged; and (2) whether the Office of Workers' Compensation Programs properly found that appellant had abandoned her request for a hearing before an Office hearing representative.

The Office accepted appellant's claim for exacerbation of the right knee. On March 14, 1997 appellant filed a claim for an occupational disease, Form CA-2, alleging that she reinjured her knee after returning to light duty, which was too strenuous for her and she "went into" depression due to the pain in her knee and her "nontreatment" at work.

Appellant explained that, while she was on light duty, her supervisor "detailed [her] to the V.I.P.," where she was placed at a small desk in the middle of the hall on the ground floor of a building. Appellant stated that she "became the joke of the hospital over the e-mail" and she told Beverly Hogle in Human Resources and the joking stopped. She stated that all she did was sit at the desk, that the hall was cold and made her knee stiff and sore but no one listened to her complain about it. Appellant stated that because she had no work to do, "many employees pass[ed] comments," which were "very demeaning and embarrassing" for her and her supervisor did nothing to stop it. Appellant further stated that she was stationed at the desk until March at which time she was told she would be assisting the ward clerks with filing and answering phones but instead she had to carry files from floor to floor walking up and down stairs and stand to make admission packages. When she went to her supervisor, her supervisor did nothing.

Appellant stated that in May she was told to work on "T2W" and be prepared to work as a nursing assistant even though she told her supervisor that an orthopedic doctor had not cleared her for the job but Ms. Harding cleared it with Employee Health. Appellant stated that she could not finish the day. She stated that her paychecks were "messed up," "the documents were being lost," and the stress at work became unbearable.

Appellant stated that on October 9, 1996 her supervisor sent her to Employee Health where she was sent to the psychiatrist but was told she should seek help outside the employing establishment, which she did. Appellant stated that from November 1996 until March 1997 the Nursing and Human Resources department tried to fire her because she was unable to do her job and that they asked her to voluntarily resign or be separated from her job.

In a memorandum dated May 28, 1997, Ms. Harding, the head nurse manager, stated that in September 1996 appellant first reported signs and symptoms of depression which she related to her "home situation," her daughter's pregnancy and physical limitations due to her injury. In a memorandum dated September 2, 1997, Ms. Harding stated that in 1996 and 1997 appellant's significant other unexpectedly died, she was evicted from her apartment, her daughter and granddaughter moved out, she went to live with her ex-husband and her mother died out of state. Due to her failure to provide documentation for her absences during this time period, Ms. Harding stated that appellant was suspended from duty from December 30, 1996 to January 12, 1997. She stated that on January 13, 1997 appellant provided a medical note which was inadequate and provided medical documentation on March 7, 1997 that she was under psychiatric care from November 4, 1996 to March 3, 1997 and that she could have returned to work on March 4, 1997, which she did not. Ms. Harding also stated that appellant did not provide any information documenting a medical condition related to her knee injury during that time period.

In an attending physician's report, Form CA-20, dated April 15, 1997, appellant's treating physician, Dr. Edwin S. Urzi, diagnosed major depression. He checked the "Yes" box that it was work related and stated that conflict with her supervisors and coworkers worsened appellant's depressive symptoms.

By letter dated August 19, 1997, the Office requested additional information from appellant including information from Dr. Urzi as to how her federal employment contributed to her condition. No evidence was forthcoming.

By decision dated November 17, 1997, the Office denied the claim, stating that the fact of injury was not established.

By letter dated December 2, 1997, appellant requested an oral hearing before an Office hearing representative.

By letter dated June 13, 1998, the Office informed appellant that an oral hearing would be held on July 21, 1998 at 10:00 a.m. in Hartford, Connecticut. Appellant did not appear.

By decision dated August 13, 1998, the Office determined that appellant had abandoned her request for a hearing as she did not request cancellation at least three calendar days prior to her hearing scheduled for July 21, 1998 or show good cause within ten calendar days of the scheduled hearing for her failure to appear.

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty, as alleged.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[1] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.[2]

To the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[3] However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[4]

In the present case, Ms. Harding's detailing appellant while she was on light duty to the "V.I.P." where she was allegedly placed in the middle of the hall on the ground floor does not constitute a compensable factor of employment. In her May 28 and September 2, 1997 memoranda, Ms. Harding stated that appellant was placed in the "V.I.P." program in a modified assignment from December 18, 1995 to April 12, 1996. She stated that appellant's location at the desk was to provide information to patients and visitors as they entered the building or passed from one building to another which was necessary due to construction being performed in the hospital. Ms. Harding also stated that it might have been drafty but a sweater would have been adequate and appellant did not complain to her about the temperature. Appellant's allegations pertain to her frustration from being required to work in a particular environment. Her dissatisfaction with her work underload, as alleged, or perceived poor management is not a compensable factor.[5] Ms. Harding, however, indicated that it was necessary work, that appellant required light-duty work due to her knee injury and appellant had not indicated at the time that it was contributing to her depression or to increased knee pain. Appellant has not shown management acted abusively or unreasonably in detailing her to the desk position and thus did not establish a compensable factor of employment.[6]

Ms. Harding noted that on April 12, 1996 appellant was moved to a limited-duty ward clerk assignment where she sat and answered phones, that the position permitted minimal

[1] 5 U.S.C. §§ 8101-8193.

[2] *Clara T. Norga*, 46 ECAB 473, 480 (1995); *see Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[3] *Clara T. Norga*, *supra* note 2 at 481; *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

[4] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[5] *See Anne L. Livermore*, 46 ECAB 425 (1995); *Goldie K. Behymer*, 45 ECAB 508 (1994).

[6] *Elizabeth Pinero*, 46 ECAB 123, 127, 129 (1994).

walking, as tolerated and had functioning elevators so appellant did not have to go upstairs. She stated that the job was within appellant's job description. Ms. Harding attached the work restriction evaluation dated May 14, 1996 completed by Dr. Esther R. Nash, a Board-certified internist, which included restrictions of no ascending and descending stairs. Appellant has not presented corroborating evidence that the work exceeded her restrictions. She has not shown management abused its discretion or acted unreasonably in assigning her to the ward clerk assignment.

Appellant did not present any corroborating evidence that her coworkers mocked her on e-mail. In her September 2, 1997 memorandum, Ms. Harding stated that no one told her that appellant was being harassed or that she received e-mail to that effect. Appellant has therefore not established a compensable factor of employment in this regard.[7]

In response to appellant's complaint that she had to report as a nursing assistant, even though the orthopedic doctor had not cleared her for the job, Ms. Harding stated that it was unclear what appellant was referencing. She stated that on May 14, 1996 appellant was cleared for return to duty as per her job description except she was not permitted to climb or descend stairs. Appellant has not shown management abused its discretion or acted unreasonably in requiring her to report as a nursing assistant as there is no evidence to support appellant's position that the job exceeded her restrictions.

Appellant also stated that her paychecks were "messed up" and documents were lost. Ms. Harding stated in her memoranda dated March 18 and September 2, 1997, that there were several instances where appellant took leave without requesting it and did not inform anyone of her absence. Matters involving the use of leave and procedures relating thereto are administrative and personnel matters that are not directly related to an employee's regular or specially assigned duties.[8] As such, they are only compensable if appellant shows management erred or acted abusively. Appellant has not presented evidence showing this occurred.

Since no compensable factors have been established it is not necessary to address the medical evidence.[9]

The Board finds that the Office properly determined that appellant abandoned her request for a hearing.

Under the federal regulations relating to the Office's procedures on hearings, a hearing may be postponed by a written request if the request is received at least three days prior to the hearing. If a claimant fails to appear for a hearing, he or she may request in writing within days

[7] *Id.*

[8] *Elizabeth Pinero*, *supra* note 6.

[9] *Diane C. Bernard*, 45 ECAB 223, 228 (1993).

after the scheduled hearing that another hearing be scheduled. Another hearing will be scheduled for good cause shown.[10]

In the present case, appellant requested an oral hearing before an Office hearing representative and by letter, dated June 13, 1998, the Office informed appellant that the oral hearing would be held on July 21, 1998 at 10:00 a.m. in Hartford, Connecticut. The letter was addressed to "Joanna C. Hine, 25 Meadowbrook Court, West Haven, CT 06516," the address appellant gave on her claim form and to which other correspondence was sent. Appellant did not request a postponement three days prior to the hearing and did not request in writing within 10 days after the scheduled date of the hearing. It is presumed under "the mailbox rule" that a properly addressed correspondence is mailed in the ordinary course of business unless rebutted. The appearance of a properly addressed copy in the case record, together with the mailing custom or practice of the Office will raise the presumption the original was received. Appellant has not submitted evidence sufficient to rebut the presumption. After issuance of the August 13, 1998 decision, appellant alleged that she moved and did not receive notice of the hearing. The Board notes, however, that its jurisdiction is limited to reviewing that evidence that was before the Office at the time of its final decision and the Board may not consider for the first time on appeal whether appellant's explanation is sufficient to rebut the presumption of receipt under the "mailbox rule."[11] The Office decision was proper.

The decisions of the Office of Workers' Compensation Programs dated August 13, 1998 and November 17, 1997 are hereby affirmed.

Dated, Washington, D.C.
April 11, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] 20 C.F.R. § 10.137.

[11] *See Carla T. Norga, supra* note 2.